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10/809,443	03/26/2004	Rolf John Martin	22050/00002US1	8591
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CONNOLLY BOVE LODGE & HUTZ LLP SUITE 800 1990 M STREET NW WASHINGTON, DC 20036-3425			CHENG, JOE H	
			ART UNIT	PAPER NUMBER
			3715	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/809,443	<b>Applicant(s)</b> MARTIN, ROLF JOHN	
	<b>Examiner</b> Joe H. Cheng	<b>Art Unit</b> 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004 and 28 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 117-136 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 117-136 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. In response to the Preliminary Amendment filed on March 26, 2004 and March 28, 2005, claims 1-116 have been cancelled and the newly added claims 117-136 are pending.

#### *Specification*

2. The term "This is a division of Application No. 09/861,768, filed May 22, 2001, now U.S. Patent No. 6,712,615, issued March 30, 2004, which claimed priority from U.S. Provisional Patent Application S.N. 60/206,072 filed May 22, 2000." on Pg. 1, line 1 should be recited as -- This is a continuation of Application of U.S. Patent Application Serial No. 09/861,768, filed May 22, 2001, now U.S. Patent No. 6,712,615 B2, which claimed priority from U.S. Provisional Patent Application Serial No. 60/206,072, filed May 22, 2000.--, so as to clarify the status, because this application is a continuation of prior application and not the divisional application.

#### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, all the claimed method steps, *inter alia*, "providing to at least one examiner at least one measurement-session comprising a plurality of response-series comprising a plurality of responses", "providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made", "determining a number of errors made by said examinee in a response-series", "displaying a computer-generated instruction to increase a response speed of said examinee when said number of error is less than a minimum number of errors within said

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response-series”, “reading at least one word input by an examinee”, “determining a performance score by said examinee”, “correlating said score with said at least one health-related word”, “providing a user with means to obtain a ranking of at least one previously-input word” and “ranking said at least one word by a health or performance change subsequent to said input” must be shown or the feature(s) canceled from the claim(s). *No* new matter should be entered.

Correction is required.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 117-136 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The antecedent basis of all the claimed method steps, *inter alia*, “providing to at least one examiner at least one measurement-session comprising a plurality of response-series comprising a plurality of responses”, “providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made”, “determining a number of errors made by said examinee in a response-series”, “displaying a computer-generated instruction to increase a response speed of said examinee when said number of error is less than a minimum number of errors within said response-series”, “reading at least one word input by an examinee”, “determining a performance score by said examinee”, “correlating said score with said at least one health-related word”, “providing a user with means to obtain a ranking of at least one previously-input word” and “ranking said at least one word by a health or performance change subsequent to said input” are lacking. Moreover, the specification does not provide any support for the newly added limitation of “said response-series comprises from about 15 to about 30 responses”, “said minimum number of errors is an integer selected from the group consisting of 1, 2, 3, 4, and 5”, “said minimum number of error is from about 10% to about 20% of said response”, “said at least one health-related word”, “a magnitude of change of said performance score after input of said word”, “a list of words rated by their correlation with positive changes in performance”, “an explanation that words given highest ratings are more likely to represent beneficial foods and other health-related items”, “means to obtain a health rating for any word entered at the time of measurement”, “first and second health rating for each said word”, “means to obtain each said first and second healthy ratings”, “means to search for said entered words with the highest and lowest health ratings”,

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“means to obtain a health rating for any word combination by concatenating words within the combination”, “means to obtain a ranking of at least one previously-input word”, “a health or performance change subsequent to said input”, “the group of words consisting words describing health-factors, performance-factors, and cognitive-factors” and “means to select a time-period covered by the analysis” as claimed. In other words, the specification does not provide antecedent basis for all the claimed method steps and structural elements set forth above.

Without a clear description of the instant claimed method and the flow chart or flow diagram for testing the cognitive performance and word analysis, one ordinary skill in the art cannot practice the invention without undue experimentation. ***NO NEW MATTER*** should be entered.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 117-136 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation therein is unclear and confusing, because the claimed method steps cannot perform the function of testing the cognitive performance and word analysis as claimed. In addition, the references for all the claimed method steps (as per claims 117-136), *inter alia*, “providing to at least one examiner at least one measurement-session comprising a plurality of response-series comprising a plurality of responses”, “providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made”, “determining a number of errors made by said examinee in

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a response-series”, “displaying a computer-generated instruction to increase a response speed of said examinee when said number of error is less than a minimum number of errors within said response-series”, “reading at least one word input by an examinee”, “determining a performance score by said examinee”, “correlating said score with said at least one health-related word”, “providing a user with means to obtain a ranking of at least one previously-input word” and “ranking said at least one word by a health or performance change subsequent to said input”; and the newly added limitation of “said response-series comprises from about 15 to about 30 responses” (as per claim 120), “said minimum number of errors is an integer selected from the group consisting of 1, 2, 3, 4, and 5” (as per claim 121), “said minimum number of error is from about 10% to about 20% of said response” (as per claim 122), “said at least one health-related word” (as per claim 124), “a magnitude of change of said performance score after input of said word” (as per claim 125), “a list of words rated by their correlation with positive changes in performance”, “an explanation that words given highest ratings are more likely to represent beneficial foods and other health-related items” (as per claim 129), “means to obtain a health rating for any word entered at the time of measurement” (as per claim 130), “first and second health rating for each said word”, “means to obtain each said first and second healthy ratings” (as per claim 131), “means to search for said entered words with the highest and lowest health ratings” (as per claim 132), “means to obtain a health rating for any word combination by concatenating words within the combination” (as per claim 133), “means to obtain a ranking of at least one previously-input word”, “a health or performance change subsequent to said input” (as per claim 134), “the group of words consisting words describing health-factors, performance-factors, and cognitive-factors” (as per claim 135) and “means to select a time-period covered by

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the analysis” (as per claim 136) has not been clearly set forth. Further, the preamble of claims 123, 128-133 and 136 are misdescriptive. The preamble should be recited as --testing-- rather than “measuring” (as per claims 123 and 128-133), and --word analysis-- rather than “measuring” (as per claim 136).

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 117-132 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Darby et al (U.S. Pub. No. 2002/0192624 A1). The broadly claimed structure can be interpreted as the system and method for testing cognitive function of Darby et al. Figs. 1-11 of Darby et al broadly discloses the method for testing the cognitive performance of at least one examinee to administer one or more psychological tests and instruct the examinee regarding rules for responding to the one or more tests without providing cultural cues such as may be introduced in language-based instruction techniques. Proper test responses may be simulated during an instruction phase preceding the testing phrase. The test of cognitive may also evaluate the decision-making, concentration, attention, and problem solving functions of the examinee. Diagnosis may involve comparing test response data to a reference test data set. The comparison result may be used to determine any deterioration of the foregoing or other cognitive functions.



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In addition, normative data related to average test results for a particular population or test control group may be stored in a data storage to facilitate comparisons with received test responses. Historic and current test response data and information derived therefrom may be also be stored in the data storage either permanently, for future analysis or comparison, or temporarily, pending transmission to a remote device for review and analysis. The instruction module provides useful instructions regarding test procedures and the manner in which a test examinee is expected to respond to test conditions. The instruction module having a test simulator operative to provide a simulation of the current test and to illustrate correct responses to various test stimuli or test trails. The test simulator may provide visual cues indicative of test procedures and proper methods of response to a plurality of test trails. The test module also provide instruction by example, and therefore may omit written or other language-based instruction paradigms. Each test involves display of virtual playing cards as visual stimuli. Each card may require a specific response or action on the part of the test subject. More complicated tests may be devised which require interaction with a number of keys is appropriate for the test protocol and the cognitive ability being evaluated.

10. Claims 133-136 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Jenkins (U.S. Pat. No. 6,669,479 B1). The broadly claimed structure can be interpreted as the method and apparatus for improved visual presentation of objects for visual processing of Jenkins. Figs. 1A-5E of Jenkins broadly discloses the computer-based method for word analysis to improve the visual processing of a target object by a examinee in conjunction with the presentation of auditory information related to the target object. As a result of this

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improved learning environment from the individually improved presentation of visual stimuli in conjunction with auditory presentation, the brain may then more easily associated between the two forms of the stimuli on a continual basis to substantially facilitate reading instruction. The computer system is employed to generate stimuli of the various cognitive tests. These stimuli may be furnished to the examinee using any of the output device. Responses from the examinee may then be recorded by input device and analyzed by the computer. If desired, feedback to the examinee may be given at various stages of the tests via the display, and speaker.

### *Conclusion*

11. It appears that applicant is claiming more than one independent and distinct invention. Under 37 C.F.R. §1.142, the requirement for restriction may be required in the future action. Further, the prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sclan et al (U.S. Pat. No. 5,082,446) teaches the method for generating the cognitive assessment tests to the spatial requirements in accordance with fundamentally different cognitive development. Silberstein (U.S. Pat. No. 5,331,969) discloses the equipment for testing or measuring brain activity for providing an integrated biomedical testing system that utilizes the brain's responses to a series of cognitive tests and to provide a detailed analysis of the patterns of complex functioning that the brain is capable of undertaking. Gozlan et al (U.S. Pat. No. 5,595,488) teaches the apparatus and method for requiring the subject to perform a task. The task is discrimination level test and cognitive tests. The stimuli of the cognitive tests administered to a subject can be in the form of audible signals, tactile signals and visual signals. Reynolds et al (U.S. Pat. No. 5,911,581) discloses the interactive computer program for

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measuring and analyzing mental ability by continuously tracking and evaluating learner interaction to create and update a profile of the learner's cognitive style and achievement level. Hersh (U.S. Pub. No. 2002/0106617 A1) teaches the multimedia method and system performs psychological assessment of an individual for suitability for particular jobs, whereby the individual is shown and provided with discrete visual and auditory stimuli on a multimedia computer screen, so that the individual's responses can be monitored in conjunction with physiological responses received by biofeedback sensors. Miranda et al (U.S. Pat. No. 6,457,975 B1) discloses the method and apparatus for training a person to learn a cognitive or functional task. Bindler et al (U.S. Pub. No. 2003/0059750 A1) teaches the automated and intelligent networked-based psychological services. These cognitive and perceptual tests measure a variety of cognitive, attentional, and perceptual attributes.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe H. Cheng whose telephone number is (571)272-4433. The examiner can normally be reached on Tue. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571)272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joe H. Cheng  
March 31, 2006

Joe H. Cheng  
Primary Examiner  
Art Unit 3715

